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STATE BOARD OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF DENTISTRY  
DOCKET NO.

In the Matter of the Suspension	:	Administrative Action
or Revocation of the License of:	:	
	:	
GUY WARREN HENRY, D.D.S.	:	FINAL DECISION AND ORDER
	:	
Licensed to Practice Dentistry	:	
in the State of New Jersey	:	
	:	

This matter was opened to the New Jersey State Board of Dentistry ("Board") upon the filing of a Notice of Motion For Enforcement of Board Order and Suspension of License by Deborah T. Poritz, Attorney General of New Jersey, by Kathy Rohr, Deputy Attorney General. In support of the motion was attached the certification of Kathy Rohr, including the September 16, 1994 memorandum from Frederick Rotgers, Psy.D. staff clinician, New Jersey Dental Association Chemical Dependency Program (C.D.P.) reporting on Dr. Henry's August 28, 1994 urine specimen that tested positive for the presence of cocaine; the laboratory report; the Consent Order entered by Dr. Henry and the Board on February 25, 1995; and the Board's Order entered on April 11, 1994. These pleadings alleged that Dr. Henry failed to comply with the terms and conditions of the Order filed with the Board on April 11, 1994 in that a laboratory report for a urine sampling provided by Dr. Henry on August 28, 1994 disclosed a confirmed positive urine test for cocaine. Further, it was alleged that Dr. Henry failed to provide a urine sample as required on the evening of September 14,

1994 and such failure by Dr. Henry to provide a urine sample will be deemed to be equivalent to a confirmed positive urine test.

Some background information is essential to an understanding of the issue regarding the allegation that Dr. Henry produced a confirmed positive urine specimen for the presence of cocaine. In March 1994, the Board was notified by the C.D.P. that it had received a report from the laboratory disclosing a positive confirmed urine test for cocaine for Dr. Henry for a specimen taken on February 5, 1994. At the hearing on March 23, 1994 counsel for respondent addressed the Board regarding the possibility of respondent electing to waive the requirement for a forensic chain of custody protocol with respect to future urine samples. In response, the Board gave respondent such an option when it included a provision in the April 11, 1994 Order, the pertinent part of which states:

The testing procedure shall include a forensic chain of custody protocol to ensure sample integrity and to provide documentation in the event of a legal challenge unless respondent immediately notifies the Board in writing that he has elected not to utilize a forensic chain of custody protocol and that he has also waived any defense he might assert that a positive urine sample was not his sample and such sample was not subject to a [forensic] chain of custody.

Following entry of the Order, counsel for respondent sent a letter dated April 15, 1994 advising the Board "that Dr. Henry has elected not to use the forensic chain of custody program and that he is thereby waiving any defense he might assert that a positive urine sample was not his sample and that such sample is not subject to a chain of custody." As a result of that notification, Dr. Henry was permitted to utilize a standard protocol for urine testing.

Dr. Henry did not file an answer to the Motion, but he submitted to the Board through his counsel, Pamela Mandel, Esq., a certification of Dr. Bill Keene, a volunteer with the Center of Alcohol Studies who collects the urine from Dr. Henry, explaining the facts surrounding his availability to take a urine sampling from Dr. Henry on August 28, 1994 and on September 18, 1994. The submission also included a letter report from Gerald E. Weinstein, M.D., Dr. Henry's treating psychiatrist, addressing the issue of Dr. Henry not attending support groups sessions and setting forth his belief in Dr. Henry that the positive result from the urine test represents a 'false positive'.

On the return date of the Motion, September 28, 1994, a hearing on the matter was held. Deputy Attorney General Kathy Rohr appeared on behalf of the Attorney General and Pamela Mandel, Esq. appeared on behalf of Dr. Henry. D.A.G. Rohr advised the Board that there were two separate allegations regarding Dr. Henry which were deemed to be violations of the terms and conditions of the Board's Order of April 11, 1994. The first issue involved an allegation that Dr. Henry, having experienced a relapse for cocaine use in March 1994, had experienced a second relapse for cocaine use as evidenced by a confirmed positive urine sample that had been provided by Dr. Henry on August 28, 1994<sup>1</sup>. The second issue of

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<sup>1</sup>Sometime after the positive urine sample of August 28, 1994, a urine sample was requested to be provided by Dr. Henry on or about September 14, 1994. The urine collector was called away on a family emergency and was therefore unavailable to collect the urine sample. A question was raised by the C.D.P. as to whether or not Dr. Henry attempted to give the sample as requested. Dr. (continued...)

concern was an allegation that Dr. Henry had not been attending any support group sessions as required by the Board's Order entered on April 11, 1994.

Dr. Henry testified on his own behalf at the hearing. He admitted that he had not attended any support groups as had been required in the Order entered in April 1994. He contends that through multiple discussions with his treating psychiatrist, Dr. Weinstein, it was determined that his participation in therapy with Dr. Weinstein and Dr. Longo, his treating psychologist, was more beneficial for his adjustment than attending group sessions which focus on drug and alcohol issues. He further admitted that he did not advise Dr. Rotgers or the Board that he would not abide by that condition in the Board Order. He expressed the belief that his problem is rooted in depression, a condition which is the focus of therapy and for which he is being medicated.

Dr. Henry, however, denied the charge that he had produced a urine specimen on August 28, 1994 that tested positive for the presence of cocaine. He advised the Board that he was called by the C.D.P. on Friday, August 26, 1994 to give a urine specimen. Thereafter, he attempted to call Dr. Keene, the collector, and received no answer. He indicated that he called multiple times on Saturday and Sunday and left messages for Dr. Keene stating that he was trying to reach him to provide a sample. He was finally

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<sup>1</sup>(...continued)

Keene's certification addresses that issue. Dr. Henry presented evidence at the hearing that he went to Roche Labs and provided a urine sample for testing when he learned that Dr. Keene was unavailable. The results of that test were negative.

successful in reaching Dr. Keene on Sunday night, August 28, 1994, at which time he was told to come to the home of Dr. Keene to give the sample.

While Dr. Henry denied having used cocaine since last February 1994, he could not offer an explanation for the positive test result. Upon questioning by Board members, Dr. Henry explained that on August 28, 1994 he provided the sample, he placed it on the desk as he usually does and he indicated that he did not initial the seal.

Dr. Rotgers also provided testimony to the Board in this matter. He advised the Board that for the sample taken on August 28, 1994 the laboratory performing the drug screening disclosed that the testing procedure for this sample included an initial screening which has relatively liberal detection limits for a variety of substances, and a second screening with a sensitive detection test performed by gas chromatography confirmation. He stated that the laboratory personnel indicated that absent some mishandling of the sample, where there is gas chromatography confirmation, the chances are extremely high, 99.99%, that the substance detected is cocaine.

In fact, he advised that he further investigated the possibility of mishandling of the sample. The investigation revealed that Dr. Keene is collecting urine specimens for one other dentist who did not go and give a specimen on August 28, 1994 or for two or three days on either side of the date the subject specimen was given. Dr. Rotgers stated that Dr. Henry was the only

person to provide a specimen that day. Dr. Rotgers also testified that to the best of his knowledge, the sample was handled correctly and adequately. When later questioned by Board Members regarding whether there is a requirement for the provider of the specimen to initial the seal for a testing procedure utilizing a standard protocol, Dr. Rotgers advised the Board that sealing and initialing by the provider of the specimen is required for a forensic chain of custody protocol but it is not required when a standard or non-forensic protocol is utilized.

Counsel for Dr. Henry contends that there was an invalid urine specimen given by Dr. Henry on August 28, 1994 since the subject specimen was not initialed and sealed by Dr. Henry. Counsel explained to the Board that before Dr. Henry made the decision to waive the forensic chain of custody protocol an inquiry was made as to how the non-forensic or standard specimen was handled. She indicated that she was told with regard to that issue that such a specimen was to be sealed and initialed. She stated, however, that she did not know that Dr. Keene was not sealing and initialing Dr. Henry's urine.

As to the charge related to Dr. Henry's failure to attend support groups, counsel for Dr. Henry pointed out that Dr. Henry should have told Dr. Rotgers and Dr. Henry should have told Ms. Mandel about the decision not to attend support groups so that the decision of Dr. Henry not to attend the support group would have been reported to the Board. Counsel argued that such a decision sounds like a very legitimate decision made between doctor and

patient and asked the Board not to punish Dr. Henry for this violation but to consider that every one is not the same and that Dr. Henry is not going to benefit by being forced to attend the support groups.

The Deputy Attorney General argued that it was disingenuous for Dr. Henry to assert a decision made between him and his doctor as the reason for his failing to abide by the April 11, 1994 Order requiring him to attend support groups. The Deputy Attorney General pointed out that at the hearing in March 1994 it was crystal clear that the Board was disturbed about Dr. Henry not attending support groups as part of his rehabilitation. In spite of the lengthy discussion at the hearing of the need for Dr. Henry to attend support groups, it was stated that he left the hearing in March 1994 and never attended any sessions of the support group which had been specifically recommended by Dr. Rotgers for Dr. Henry.

Moreover, the Deputy Attorney General maintains that at the hearing in March 1994, Dr. Henry was given a choice to waive the forensic chain of custody protocol in exchange for his inability to assert a defense that a positive urine sample was not his sample. The D.A.G. pointed out that this election was made after serious thought had been given to the issue and after there had been an inquiry as to how the non-forensic or standard samples were to be taken. It was argued that in spite of the fact that Dr. Henry had been told that non-forensic or standard samples would be sealed and signed or initialed, Dr. Henry provided the sample at

issue and stated at the hearing that he never sealed and signed it. It was the opinion of the Deputy Attorney General that if Dr. Henry took the time to ascertain how the non-forensic or standard protocol would be carried out, it seems odd that he would not ensure when providing a sample that the sample would be sealed and signed by him in the way he had been told it was to be carried out.

Further, the Deputy Attorney General, in addressing the question as to whether Dr. Henry should have put his initials on that sample, maintained that Dr. Henry waived the requirement to put his initials on the sample when he chose to utilize the standard monitoring protocol. She argued that the sample is presumed to be his and it is also presumed to be a valid test which was confirmed positive for cocaine. In concluding, the Board was urged to consider that this is the second time that Dr. Henry is before the Board for alleged violations of a Board Order and both issues being considered by the Board are violations of the Order entered on April 11, 1994.

The Board conducted its deliberations of the record before it in Executive Session on September 28, 1994. Before reaching a final decision in this matter, the Board also considered additional documentation submitted to it on November 2, 1994 for its review. Those documents included letters addressing the issue of Dr. Henry's attendance at the support groups, from Pamela Mandel, Esq., Dr. Weinstein, Dr. Longo and attendance verification for A.A. and Rational Recovery meetings during the month of October 1994.



The Board finds that Dr. Henry has failed to comply with two substantive terms of the Order filed with the Board on April 11, 1994, in that he provided a urine specimen on August 28, 1994 that tested positive for the presence of cocaine and since the time of the filing of the Order on April 11, 1994 to the date of the hearing, he failed to attend the Rational Recovery Support Group at least once a week, as expressly required.

According to the terms of the Order of April 11, 1994, any confirmed positive urine test shall be presumed valid and Dr. Henry shall bear the burden of demonstrating its invalidity. The Board was not convinced or persuaded by Dr. Henry's assertion that the absence of his sealing and initialing the samples at the time it was provided on August 28, 1994 resulted in the testing of an invalid urine specimen. The Board was of the opinion that the issue of an invalid urine specimen is not an issue to be decided in this matter as Dr. Henry has waived his right to a forensic chain of custody protocol and the sealing and initialing of a specimen is not required when a standard protocol is used for testing. Testimony presented to the Board revealed that Dr. Henry consulted with an attorney regarding his options with respect to the forensic chain of custody and standard protocols before he informed the Board of his decision to waive the forensic chain of custody protocol and began utilizing the standard protocol. Therefore, he cannot now contest the procedure for collection of the sampling to assert that the sample which tested positive for cocaine use is not his sample.

Further, as to the violation for failing to attend support groups, the Board was impressed that Dr. Henry did not report his decision not to attend the support group to either Dr. Rotgers or his attorney or to the Board directly. It also appeared to the Board that Dr. Henry has failed to recognize that strict compliance is required with each and every term and condition set forth in the Board's Order and that appropriate disclosures need to be made to personnel in the C.D.P. or to the Board when there is noncompliance with any term or condition of the Board Order.

Accordingly, the Board finds there is a basis for ordering sanctions against Dr. Henry in light of his failure to comply with the Board's Order of April 11, 1994. That Order permitted Dr. Henry to remain in practice only so long as Dr. Henry complied with the terms and conditions placed on his licensure and that any lapse in Dr. Henry's conduct would be reported immediately to the Board. The Board finds it necessary to impose sanctions in this matter for the purposes of deterring respondent from violating the Board's Order and for the protection of the public, and the Board further finds that in view of these incidents it is necessary to modify the terms of the prior Orders in this matter. Therefore, in accordance with the Board's findings herein and for other good cause shown,

IT IS ON THIS 16<sup>th</sup> DAY OF NOVEMBER 1994,

HEREBY ORDERED THAT:

1. The license of Guy Warren Henry, D.D.S. to practice dentistry in the State of New Jersey shall be and is hereby suspended for a period of five (5) years, ninety (90) days of which

shall be active suspension and shall commence on November 30, 1994 through February 28, 1995. The remaining period of suspension shall be stayed and shall constitute a probationary period so long as respondent complies with all of the other terms of this Order. The respondent shall derive no financial remuneration directly or indirectly related to patient fees paid for dental services rendered during the period of active suspension by other licensees for patients of respondent's practice. Respondent shall not be permitted to enter upon the premises of the dental facility during the period of active suspension or provide any consultation to other licensees rendering treatment to patients of the respondent or sign or submit insurance claim forms for treatment rendered during the period of active suspension.

a. At the conclusion of the active suspension period and prior to returning to the practice of dentistry, respondent shall submit to an examination by Dr. Glat to evaluate whether respondent is fit to resume the practice of dentistry.

2. Respondent shall continue enrollment and participation in the New Jersey Dental Association Chemical Dependency Program (C.D.P.) and shall comply with a monitoring program supervised by C.D.P. which shall include, at a minimum, the following conditions:

(a) Respondent shall have his urine monitored under the supervision of the C.D.P. on a random, unannounced basis, twice weekly. The urine monitoring shall be conducted with direct witnessing of the taking of the samples either from a volunteer or drug clinic staff as arranged and designed by the C.D.P. The

initial drug screen shall utilize the EMIT technique and all confirming tests and/or secondary tests will be performed by gas chromatography/mass spectrometry (G.C./M.S.). The testing procedure shall include a forensic chain of custody protocol to ensure sample integrity and to provide documentation in the event of a legal challenge. The C.D.P. shall be responsible to ensure that all urine samples are handled by a laboratory competent to provide these services.

All test results shall be provided in the first instance directly to the C.D.P., and any positive result shall be reported immediately by the C.D.P. to Agnes Clarke, Executive Director of the Board, or her designee in the event she is unavailable. The Board also will retain sole discretion to modify the manner of testing in the event technical developments or individual requirements indicate that a different methodology or approach is required in order to guarantee the accuracy and reliability of the testing.

Any failure by the respondent to submit or provide a urine sample within twenty-four (24) hours of a request will be deemed to be equivalent to a confirmed positive urine test. In the event the respondent is unable to appear for a scheduled urine test or provide a urine sample due to illness or other impossibility, consent to waive that day's test must be secured from Dr. Frederick Rotgers or Dr. Barbara McCrady of the C.D.P. Neither the volunteer nor drug clinic staff shall be authorized to consent to waive a urine test. In addition, respondent must provide the C.D.P. with

written substantiation of his inability to appear within two (2) days, e.g., a physician's report attesting that the respondent was so ill that he was unable to provide the urine sample or appear for the test. "Impossibility" as employed in this provision shall mean an obstacle beyond the control of the respondent that is so insurmountable or that makes appearance for the test or provision of the urine sample so infeasible that a reasonable person would not withhold consent to waive the test on that day. The C.D.P. shall advise the Board of every instance where a request has been made to waive a urine test together with the Program's determination in each such case. The Board may in its sole discretion modify the frequency of testing or method of reporting during the monitoring period.

(b) Respondent shall immediately submit to an independent psychological evaluation by Dr. Mark Glat. The cost of such examination shall be borne by respondent. Dr. Glat shall make a determination as to the nature of respondent's current clinical condition. A report of the evaluation shall be provided to the Board which sets forth a recommendation as to the appropriate type of support groups that respondent shall attend as part of his rehabilitation. Respondent shall provide evidence of attendance at such group(s) directly to the C.D.P. on a form or in a manner as required by the C.D.P. The C.D.P. shall advise the Board immediately in the event it receives information that respondent has discontinued attendance at the support group(s).

(c) The C.D.P. shall provide quarterly reports to the Board in regard to its monitoring of respondent's program as outlined herein including, but not limited to, the urine testing and the attendance at support groups. The Program shall attach to its quarterly reports any and all appropriate reports and/or documentation concerning any of the monitoring aspects of the within program.

(d) Respondent shall continue in therapy on a biweekly basis with Dr. Weinstein and Dr. Longo and shall have his medication monitored at a frequency as recommended with Gerald E. Weinstein, M.D. of Princeton, New Jersey. Respondent shall cause Dr. Weinstein to provide quarterly reports directly to the Board with respect to his attendance and progress in therapy.

(e) Respondent shall not prescribe controlled dangerous substances nor shall he possess such substances except pursuant to a bona fide prescription written by a physician or dentist for good medical or dental cause. Respondent shall cause any physician or dentist who prescribed medication which is a controlled dangerous substance to provide a written report to the Board together with patient records indicating the need for such medication. Such report shall be provided to the Board no later than seven (7) days subsequent to the prescription in order to avoid confusion which may be caused by a confirmed positive urine test as a result of such medication.

(f) Respondent shall continue to cease and desist any use of parenteral conscious sedation for dental patients for the duration

of the five (5) year period of suspension set forth in paragraph one of this Order.

(g) Respondent shall provide appropriate releases to any and all parties who are participating in the monitoring program as outlined herein as may be required in order that all reports, records, and other pertinent information may be provided to the Board in a timely manner.

3. All costs associated with the monitoring program as outlined herein shall be paid directly by the respondent.

4. Respondent shall perform two (200) hundred hours of dental community service at a facility designated and/or provided by the Board. Said community service shall be completed within one year from the first day of performance. Respondent shall comply with the dental protocol and procedures as required at the designated facility and shall perform said services in accordance with the schedule established by respondent and the facility. In the event the performance of the community service at the first designated facility is discontinued for any reason whatsoever respondent shall perform the balance of required hours at an alternate facility designed by the Board. In the event that respondent conducts any portion of said dental community service in his dental office, he shall document and maintain a record of the patient's name, type of treatment and the amount of time expended. Respondent shall not perform dental community service during the period that his license is actively suspended or before such time as it has been determined that respondent is fit to return to the practice of dentistry.

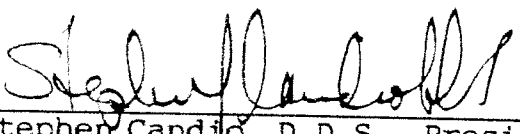
5. Respondent shall have leave to apply for modification of the terms and conditions of the within Order no sooner than one (1) year from the entry date herein.

6. Prior to filing a petition for modification of the within Order, the respondent shall submit to a psychological evaluation by a licensed psychologist to be selected by the Board.

7. It is expressly understood and agreed that continued licensure with restrictions as ordered herein is contingent upon strict compliance with all of the aforementioned conditions. Upon the Board's receipt of any information indicating that any term of the within Order has been violated in any manner whatsoever, including, but not limited to, a verbal report of a confirmed positive urine or any other evidence that respondent has used an addictive substance, a hearing shall be held on short notice before the Board or before its representative authorized to act on its behalf. The proofs at such a hearing shall be limited to evidence of the particular violation at issue. Any confirmed positive urine test shall be presumed valid, and respondent shall bear the burden of demonstrating its invalidity.

8. This Order shall supersede any and all provisions of the Board's prior Order of April 11, 1994.

STATE BOARD OF DENTISTRY

By:   
Stephen Candio, D.D.S., President